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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

<b>FRANK GUTIERREZ</b> , individually	)	Case No.
and on behalf of all others similarly	)	
situated,	)	<b><u>CLASS ACTION</u></b>
	)	
Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
	)	<b>OF:</b>
vs.	)	
	)	1. NEGLIGENT VIOLATIONS
<b>APRIA HEALTHCARE GROUP</b>	)	OF THE TELEPHONE
<b>INC.</b> ; DOES 1-10 inclusive,	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227 ET
	)	SEQ.]
Defendants.	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227 ET
	)	SEQ.]
	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>

Plaintiff, FRANK GUTIERREZ (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable

1 remedies resulting from the illegal actions of APRIA HEALTHCARE GROUP  
2 INC., (“Defendant”), in negligently, knowingly, and/or willfully contacting  
3 Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer  
4 Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s  
5 privacy.

### 6 **JURISDICTION & VENUE**

7 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
8 a resident of California, seeks relief on behalf of a Class, which will result in at  
9 least one class member belonging to a different state than that of Defendant, a  
10 Delaware Corporation headquartered in California. Plaintiff also seeks up to  
11 \$1,500.00 in damages for each call in violation of the TCPA, which, when  
12 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00  
13 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and  
14 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are  
15 present, and this Court has jurisdiction.

16 3. Venue is proper in the United States District Court for the CENTRAL  
17 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does  
18 business within the state of California and the County of Orange.

### 19 **PARTIES**

20 4. Plaintiff, FRANK GUTIERREZ (“Plaintiff”), is a natural person  
21 residing in Santa Ana, California, and is a “person” as defined by 47 U.S.C. § 153  
22 (10).

23 5. Defendant, APRIA HEALTHCARE GROUP INC. (“Defendant”), is  
24 a company that regularly collects or attempts to collect consumer debt from  
25 consumers, and is a “person” as defined by 47 U.S.C. § 153 (10).

26 6. The above named Defendant, and its subsidiaries and agents, are  
27 collectively referred to as “Defendants.” The true names and capacities of the  
28 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are

1 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
2 names. Each of the Defendants designated herein as a DOE is legally responsible  
3 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
4 Complaint to reflect the true names and capacities of the DOE Defendants when  
5 such identities become known.

6 7. Plaintiff is informed and believes that at all relevant times, each and  
7 every Defendant was acting as an agent and/or employee of each of the other  
8 Defendants and was acting within the course and scope of said agency and/or  
9 employment with the full knowledge and consent of each of the other Defendants.  
10 Plaintiff is informed and believes that each of the acts and/or omissions complained  
11 of herein was made known to, and ratified by, each of the other Defendants.

### 12 **FACTUAL ALLEGATIONS**

13 8. Beginning in or around July of 2015, and continuing through July of  
14 2016, Defendant contacted Plaintiff on his cellular telephone ending in -7786 in  
15 connection with attempted collection on an alleged outstanding debt.

16 9. Defendant placed multiple calls to Plaintiff, often averaging at least  
17 one (1) call per to Plaintiff's cellular telephone in the span of several months.

18 10. Defendant made these calls seeking to collect an alleged debt owed by  
19 Plaintiff.

20 11. Defendant called from phone numbers confirmed to belong to  
21 Defendant, including without limitation (513) 360-9575.

22 12. Defendant used an "automatic telephone dialing system," as defined  
23 by 47 U.S.C. § 227(a)(1) to place its frequent and incessant calls to Plaintiff seeking  
24 to collect the debt allegedly owed.

25 13. Defendant's calls constituted calls that were not for emergency  
26 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

27 14. Defendant's calls were placed to telephone number assigned to a  
28 cellular telephone service for which Plaintiff incurs a charge for incoming calls

1 pursuant to 47 U.S.C. § 227(b)(1).

2 15. Plaintiff has never provided any personal information, including his  
3 cellular telephone number, to Defendant for any purpose whatsoever. Accordingly,  
4 Defendant never received Plaintiff's "prior express consent" to receive calls using  
5 an automatic telephone dialing system or an artificial or prerecorded voice on his  
6 cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

### 7 **CLASS ALLEGATIONS**

8 16. Plaintiff brings this action on behalf of himself and all others similarly  
9 situated, as a member of the proposed class (hereafter "The Class") defined as  
10 follows:

11 All persons within the United States who received any  
12 collection telephone calls from Defendant to said  
13 person's cellular telephone made through the use of any  
14 automatic telephone dialing system and such person had  
15 not previously consented to receiving such calls within  
16 the four years prior to the filing of this Complaint

17 17. Plaintiff represents, and is a member of, The Class, consisting of All  
18 persons within the United States who received any collection telephone calls from  
19 Defendant to said person's cellular telephone made through the use of any  
20 automatic telephone dialing system and such person had not previously not  
21 provided their cellular telephone number to Defendant within the four years prior  
22 to the filing of this Complaint.

23 18. Defendant, its employees and agents are excluded from The Class.  
24 Plaintiff does not know the number of members in The Class, but believes the Class  
25 members number in the thousands, if not more. Thus, this matter should be  
26 certified as a Class Action to assist in the expeditious litigation of the matter.

27 19. The Class is so numerous that the individual joinder of all of its  
28 members is impractical. While the exact number and identities of The Class

1 members are unknown to Plaintiff at this time and can only be ascertained through  
2 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
3 The Class includes thousands of members. Plaintiff alleges that The Class  
4 members may be ascertained by the records maintained by Defendant.

5 20. Plaintiff and members of The Class were harmed by the acts of  
6 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
7 and Class members via their cellular telephones thereby causing Plaintiff and Class  
8 members to incur certain charges or reduced telephone time for which Plaintiff and  
9 Class members had previously paid by having to retrieve or administer messages  
10 left by Defendant during those illegal calls, and invading the privacy of said  
11 Plaintiff and Class members.

12 21. Common questions of fact and law exist as to all members of The  
13 Class which predominate over any questions affecting only individual members of  
14 The Class. These common legal and factual questions, which do not vary between  
15 Class members, and which may be determined without reference to the individual  
16 circumstances of any Class members, include, but are not limited to, the following:

- 17 a. Whether, within the four years prior to the filing of this Complaint,  
18 Defendant made any collection call (other than a call made for  
19 emergency purposes or made with the prior express consent of the  
20 called party) to a Class member using any automatic telephone  
21 dialing system to any telephone number assigned to a cellular  
22 telephone service;
- 23 b. Whether Plaintiff and the Class members were damages thereby,  
24 and the extent of damages for such violation; and
- 25 c. Whether Defendant should be enjoined from engaging in such  
26 conduct in the future.

27 22. As a person that received numerous collection calls from Defendant  
28 using an automatic telephone dialing system, without Plaintiff's prior express

1 consent, Plaintiff is asserting claims that are typical of The Class.

2 23. Plaintiff will fairly and adequately protect the interests of the members  
3 of The Class. Plaintiff has retained attorneys experienced in the prosecution of  
4 class actions.

5 24. A class action is superior to other available methods of fair and  
6 efficient adjudication of this controversy, since individual litigation of the claims  
7 of all Class members is impracticable. Even if every Class member could afford  
8 individual litigation, the court system could not. It would be unduly burdensome  
9 to the courts in which individual litigation of numerous issues would proceed.  
10 Individualized litigation would also present the potential for varying, inconsistent,  
11 or contradictory judgments and would magnify the delay and expense to all parties  
12 and to the court system resulting from multiple trials of the same complex factual  
13 issues. By contrast, the conduct of this action as a class action presents fewer  
14 management difficulties, conserves the resources of the parties and of the court  
15 system, and protects the rights of each Class member.

16 25. The prosecution of separate actions by individual Class members  
17 would create a risk of adjudications with respect to them that would, as a practical  
18 matter, be dispositive of the interests of the other Class members not parties to such  
19 adjudications or that would substantially impair or impede the ability of such non-  
20 party Class members to protect their interests.

21 26. Defendant has acted or refused to act in respects generally applicable  
22 to The Class, thereby making appropriate final and injunctive relief with regard to  
23 the members of the California Class as a whole.

## 24 **FIRST CAUSE OF ACTION**

### 25 **Negligent Violations of the Telephone Consumer Protection Act**

#### 26 **47 U.S.C. §227 et seq.**

27 27. Plaintiff repeats and incorporates by reference into this cause of  
28 action the allegations set forth above at Paragraphs 1-26.

28. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

29. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

30. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

### **SECOND CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227 et seq.**

31. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-26.

32. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

33. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

34. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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1                                   **PRAYER FOR RELIEF**

2       WHEREFORE, Plaintiff requests judgment against Defendant for the following:

3                                   **FIRST CAUSE OF ACTION**

4                   **Negligent Violations of the Telephone Consumer Protection Act**

5                                   **47 U.S.C. §227 et seq.**

- 6                   • As a result of Defendant's negligent violations of *47 U.S.C. §*  
7                   *227(b)(1)*, Plaintiff and the Class members are entitled to and request  
8                   \$500 in statutory damages, for each and every violation, pursuant to  
9                   *47 U.S.C. § 227(b)(3)(B)*.  
10                  • Any and all other relief that the Court deems just and proper.

11                                  **SECOND CAUSE OF ACTION**

12           **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

13                                  **47 U.S.C. §227 et seq.**

- 14                  • As a result of Defendant's willful and/or knowing violations of *47*  
15                  *U.S.C. § 227(b)(1)*, Plaintiff and the Class members are entitled to  
16                  and request treble damages, as provided by statute, up to \$1,500, for  
17                  each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and  
18                  *47 U.S.C. § 227(b)(3)(C)*.  
19                  • Any and all other relief that the Court deems just and proper.

20                                  **JURY DEMAND**

21           35.     Plaintiff demands a trial by jury on all issues so triable pursuant to his  
22     rights under the Seventh Amendment to the Constitution of the United States of  
23     America.

24           Respectfully Submitted this 3d day of April, 2017.

25                                  LAW OFFICES OF TODD M. FRIEDMAN, P.C.

26                                  By: /s/ Todd M. Friedman

27                                       Todd M. Friedman

28                                       Law Offices of Todd M. Friedman

                                      Attorney for Plaintiff